



General Assembly

January Session, 2005

Raised Bill No. 1326

LCO No. 4396

04396_____JUD

Referred to Committee on Judiciary

Introduced by:
(JUD)

AN ACT CONCERNING DRUG DEALER LIABILITY.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective October 1, 2005*) Sections 1 to 16,
2 inclusive, of this act may be cited as the "Drug Dealer Liability Act".

3 Sec. 2. (NEW) (*Effective October 1, 2005*) As used in sections 1 to 16,
4 inclusive, of this act:

5 (1) "Illegal drug" means a drug the distribution of which is a
6 violation of state law.

7 (2) "Illegal drug market" means the support system of illegal drug
8 related operations, from production to retail sales, through which an
9 illegal drug reaches the user.

10 (3) "Illegal drug market target community" means the applicable
11 area described in section 7 of this act.

12 (4) "Individual drug user" means an individual whose illegal drug
13 use is the basis of an action brought under sections 1 to 16, inclusive, of
14 this act.

15 (5) "Level one offense" means possession of one-quarter ounce or
16 more, but less than four ounces, or distribution of less than one ounce
17 of a specified illegal drug or possession of one pound or twenty-five
18 plants or more, but less than four pounds or fifty plants, or distribution
19 of less than one pound of marijuana.

20 (6) "Level two offense" means possession of four ounces or more,
21 but less than eight ounces, or distribution of one ounce or more, but
22 less than two ounces, of a specified illegal drug or possession of four
23 pounds or more or fifty plants or more, but less than eight pounds or
24 seventy-five plants, or distribution of more than one pound, but less
25 than five pounds, of marijuana.

26 (7) "Level three offense" means possession of eight ounces or more,
27 but less than sixteen ounces, or distribution of two ounces or more, but
28 less than four ounces, of a specified illegal drug or possession of eight
29 pounds or more or seventy-five plants or more, but less than sixteen
30 pounds or one hundred plants, or distribution of more than five
31 pounds, but less than ten pounds, of marijuana.

32 (8) "Level four offense" means possession of sixteen ounces or more
33 or distribution of four ounces or more of a specified illegal drug or
34 possession of sixteen pounds or more or one hundred plants or more
35 or distribution of ten pounds or more of marijuana.

36 (9) "Participate in the illegal drug market" means to distribute,
37 possess with an intent to distribute or commit an act intended to
38 facilitate the marketing or distribution of an illegal drug, or to agree to
39 distribute, possess with an intent to distribute or commit an act
40 intended to facilitate the marketing and distribution of an illegal drug,
41 but does not include the purchase or receipt of an illegal drug for
42 personal use only.

43 (10) "Person" means an individual, a governmental entity or a
44 corporation, limited liability company, firm, trust, partnership or
45 incorporated or unincorporated association organized under or

46 authorized by the laws of this state, another state or a foreign country.

47 (11) "Period of illegal drug use" means, in relation to an individual
48 drug user, the time from the individual drug user's first use of an
49 illegal drug to the accrual of the right of action.

50 (12) "Place of illegal drug activity" means, in relation to an
51 individual drug user, each assembly district in which the individual
52 drug user possesses or uses an illegal drug or in which the individual
53 drug user resides, attends school or is employed during the period of
54 the individual drug user's illegal drug use, unless the defendant
55 proves otherwise by clear and convincing evidence.

56 (13) "Place of participation" means, in relation to a defendant in an
57 action brought under sections 1 to 16, inclusive, of this act, each
58 assembly district in which the person participates in the illegal drug
59 market or in which the person resides, attends school or is employed
60 during the period of the person's participation in the illegal drug
61 market.

62 (14) "Specified illegal drug" means cocaine, heroin,
63 methamphetamine or any other drug the distribution of which is a
64 violation of state law.

65 Sec. 3. (NEW) (*Effective October 1, 2005*) (a) A person who knowingly
66 participates in the illegal drug market within this state is liable for civil
67 damages as provided in sections 1 to 16, inclusive, of this act. A person
68 may recover damages under sections 1 to 16, inclusive, of this act for
69 injury resulting from an individual drug user's use of an illegal drug.

70 (b) A law enforcement officer or agency, the state or a person acting
71 at the direction of a law enforcement officer or agency or the state is
72 not liable for participating in the illegal drug market if the
73 participation is in furtherance of an official investigation.

74 Sec. 4. (NEW) (*Effective October 1, 2005*) (a) One or more of the
75 following persons may bring an action for damages caused by an

76 individual drug user's use of an illegal drug:

77 (1) A parent, legal guardian, child, spouse or sibling of the
78 individual drug user;

79 (2) An individual who was exposed to an illegal drug in utero;

80 (3) An employer of the individual drug user;

81 (4) A medical facility, insurer, governmental entity, employer or
82 other entity that funds a drug treatment program or employee
83 assistance program for the individual drug user or that otherwise
84 expended money on behalf of the individual drug user; and

85 (5) A person injured as a result of the wilful, reckless or negligent
86 actions of an individual drug user.

87 (b) A person entitled to bring an action under this section may seek
88 damages from one or more of the following:

89 (1) A person who knowingly distributed, or knowingly participated
90 in the chain of distribution of, an illegal drug that was actually used by
91 the individual drug user; and

92 (2) A person who knowingly participated in the illegal drug market
93 if (A) the place of illegal drug activity by the individual drug user is
94 within the illegal drug market target community of the defendant, (B)
95 the defendant's participation in the illegal drug market was connected
96 with the same type of illegal drug used by the individual drug user,
97 and (C) the defendant participated in the illegal drug market at any
98 time during the individual drug user's period of illegal drug use.

99 (c) A person entitled to bring an action under this section may
100 recover all of the following:

101 (1) Economic damages, including, but not limited to, the cost of
102 treatment and rehabilitation, medical expenses, loss of economic or
103 educational potential, loss of productivity, absenteeism, support

104 expenses, accidents or injury, and any other pecuniary loss
105 proximately caused by an individual drug user's illegal drug use;

106 (2) Noneconomic damages, including, but not limited to, physical
107 and emotional pain, suffering, physical impairment, emotional
108 distress, mental anguish, disfigurement, loss of enjoyment, loss of
109 companionship, services and consortium, and other nonpecuniary loss
110 proximately caused by an individual drug user's illegal drug use;

111 (3) Punitive damages;

112 (4) Reasonable attorney's fees; and

113 (5) Costs of suit, including, but not limited to, reasonable expenses
114 for expert testimony.

115 Sec. 5. (NEW) (*Effective October 1, 2005*) (a) An individual drug user
116 may bring an action for damages caused by the use of an illegal drug
117 only if all of the following conditions are met:

118 (1) The individual drug user personally discloses to law
119 enforcement authorities, more than six months before filing the action,
120 all of the information known to the individual drug user regarding all
121 of such individual drug user's sources of illegal drugs;

122 (2) The individual drug user has not used an illegal drug within the
123 six months before filing the action; and

124 (3) The individual drug user continues to remain free of the use of
125 an illegal drug throughout the pendency of the action.

126 (b) An individual drug user entitled to bring an action under this
127 section may seek damages only from a person who distributed, or is in
128 the chain of distribution of, an illegal drug that was actually used by
129 the individual drug user.

130 (c) An individual drug user entitled to bring an action under this
131 section may recover only the following damages:

132 (1) Economic damages, including, but not limited to, the cost of
133 treatment and rehabilitation, medical expenses, loss of economic or
134 educational potential, loss of productivity, absenteeism, accidents or
135 injury, and any other pecuniary loss proximately caused by the
136 individual drug user's illegal drug use;

137 (2) Reasonable attorney's fees; and

138 (3) Costs of suit, including, but not limited to, reasonable expenses
139 for expert testimony.

140 Sec. 6. (NEW) (*Effective October 1, 2005*) A third party shall not pay
141 any damages awarded under sections 1 to 16, inclusive, of this act, or
142 provide a defense or money for a defense, on behalf of an insured
143 under a contract of insurance or indemnification.

144 Sec. 7. (NEW) (*Effective October 1, 2005*) A person whose
145 participation in the illegal drug market constitutes the following level
146 offense shall be considered to have the following corresponding illegal
147 drug market target community:

148 (1) For a level one offense, the assembly district in which the
149 defendant's place of participation is situated;

150 (2) For a level two offense, the illegal drug market target community
151 described in subdivision (1) of this section plus all assembly districts
152 with a border contiguous to such target community;

153 (3) For a level three offense, the illegal drug market target
154 community described in subdivision (2) of this section plus all
155 assembly districts with a border contiguous to such target community;
156 or

157 (4) For a level four offense, the state.

158 Sec. 8. (NEW) (*Effective October 1, 2005*) (a) Two or more persons
159 may join in one action under sections 1 to 16, inclusive, of this act as

160 plaintiffs if (1) their respective actions have at least one place of illegal
161 drug activity in common, and (2) any portion of the period of illegal
162 drug use overlaps with the period of illegal drug use for every other
163 plaintiff. For the purposes of sections 1 to 16, inclusive, of this act, the
164 period of illegal drug use is presumed to commence two years before
165 the right of action accrues unless the defendant proves otherwise by
166 clear and convincing evidence.

167 (b) Two or more persons may be joined in one action under sections
168 1 to 16, inclusive, of this act as defendants if such persons may be liable
169 to at least one plaintiff.

170 (c) In an action under sections 1 to 16, inclusive, of this act: (1) A
171 plaintiff need not be interested in obtaining and a defendant need not
172 be interested in defending against all the relief demanded; and (2)
173 judgment may be given for one or more plaintiffs according to their
174 respective rights to relief and against one or more defendants
175 according to their respective liabilities.

176 Sec. 9. (NEW) (*Effective October 1, 2005*) (a) An action under sections
177 1 to 16, inclusive, of this act by an individual drug user is governed by
178 the principles of comparative responsibility. Comparative
179 responsibility attributed to the plaintiff does not bar recovery but
180 diminishes the award of compensatory damages proportionally,
181 according to the measure of responsibility attributed to the plaintiff.

182 (b) The burden of proving the comparative responsibility of the
183 plaintiff is on the defendant, which shall be shown by clear and
184 convincing evidence.

185 (c) Comparative responsibility shall not be attributed to a plaintiff
186 who is not an individual drug user.

187 Sec. 10. (NEW) (*Effective October 1, 2005*) A person subject to liability
188 under sections 1 to 16, inclusive, of this act has a right of action for
189 contribution against another person subject to liability under sections 1

190 to 16, inclusive, of this act. Contribution may be enforced either in the
191 original action or by a separate action brought for such purpose. A
192 plaintiff may seek recovery in accordance with sections 1 to 16,
193 inclusive, of this act and other applicable law against a person whom a
194 defendant has asserted a right of contribution.

195 Sec. 11. (NEW) (*Effective October 1, 2005*) (a) Proof of participation in
196 an illegal drug market in an action brought under sections 1 to 16,
197 inclusive, of this act shall be shown by clear and convincing evidence.
198 Except as otherwise provided in sections 1 to 16, inclusive, of this act,
199 other elements of the right of action shall be shown by a
200 preponderance of the evidence.

201 (b) A person against whom recovery is sought who has a criminal
202 drug conviction pursuant to state drug laws or the Comprehensive
203 Drug Abuse Prevention and Control Act of 1970, 21 USC 801 et seq., is
204 estopped from denying participation in an illegal drug market. Such
205 conviction is also prima facie evidence of the person's participation in
206 an illegal drug market during the two years preceding the date of an
207 act giving rise to the conviction.

208 (c) The absence of a criminal drug conviction of a person against
209 whom recovery is sought does not bar an action against such person
210 under sections 1 to 16, inclusive, of this act.

211 Sec. 12. (NEW) (*Effective October 1, 2005*) (a) Prior to any judgment in
212 an action under sections 1 to 16, inclusive, of this act, subject to
213 subsection (c) of this section, a plaintiff may request an ex parte order
214 from the court granting an attachment against all assets of a defendant
215 sufficient to satisfy a potential award. If such attachment is ordered,
216 the defendant shall be entitled to an immediate hearing thereon. An
217 attachment under this subsection may be dissolved if the defendant
218 demonstrates that the assets will be available for a potential award or
219 if the defendant posts a bond sufficient to satisfy a potential award.

220 (b) Notwithstanding the provisions of section 52-352b of the general

221 statutes, a person against whom a judgment has been rendered under
222 sections 1 to 16, inclusive, of this act shall not be eligible to exempt any
223 property, of whatever kind, from process to levy or process to execute
224 on the judgment.

225 (c) Any assets sought to satisfy a judgment under sections 1 to 16,
226 inclusive, of this act that are named in a forfeiture action or have been
227 seized for forfeiture by any state or federal agency may not be used to
228 satisfy such judgment unless and until the assets have been released
229 following the conclusion of the forfeiture action or released by the
230 agency that seized the assets.

231 Sec. 13. (NEW) (*Effective October 1, 2005*) (a) Except as otherwise
232 provided in this section, a claim under sections 1 to 16, inclusive, of
233 this act shall not be brought more than two years after the right of
234 action accrues. A right of action accrues under sections 1 to 16,
235 inclusive, of this act when a person who may recover has reason to
236 know of the harm from illegal drug use that is the basis for the right of
237 action and has reason to know that the illegal drug use is the cause of
238 the harm.

239 (b) For a plaintiff, the period of limitation under this section is tolled
240 while the individual potential plaintiff is incapacitated by the use of an
241 illegal drug to the extent that the individual cannot reasonably be
242 expected to seek recovery under sections 1 to 16, inclusive, of this act
243 or as otherwise provided by law. For a defendant, the period of
244 limitation under this section is tolled until six months after the
245 individual potential defendant is convicted of a criminal drug offense
246 or as otherwise provided by law.

247 (c) The period of limitation under this section for a claim based on
248 participation in the illegal drug market that occurred prior to the
249 effective date of this section shall not begin to run until the effective
250 date of this section.

251 Sec. 14. (NEW) (*Effective October 1, 2005*) (a) A prosecuting attorney

252 may represent the state or a political subdivision of the state in an
253 action brought under sections 1 to 16, inclusive, of this act.

254 (b) On motion of a governmental agency involved in a criminal
255 drug investigation or prosecution, an action brought under sections 1
256 to 16, inclusive, of this act shall be stayed until the completion of the
257 criminal drug investigation or prosecution that gave rise to such
258 motion.

259 Sec. 15. (NEW) (*Effective October 1, 2005*) The provisions of sections 1
260 to 16, inclusive, of this act are not intended to alter any law regarding
261 immunity from liability between spouses or other family members.

262 Sec. 16. (NEW) (*Effective October 1, 2005*) If any provision of sections
263 1 to 16, inclusive, of this act or the application of any such provision to
264 any person or circumstance is held invalid, the remainder of sections 1
265 to 16, inclusive, of this act and the application thereof to any other
266 person or circumstance shall not be affected by such invalidation.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2005</i>	New section
Sec. 2	<i>October 1, 2005</i>	New section
Sec. 3	<i>October 1, 2005</i>	New section
Sec. 4	<i>October 1, 2005</i>	New section
Sec. 5	<i>October 1, 2005</i>	New section
Sec. 6	<i>October 1, 2005</i>	New section
Sec. 7	<i>October 1, 2005</i>	New section
Sec. 8	<i>October 1, 2005</i>	New section
Sec. 9	<i>October 1, 2005</i>	New section
Sec. 10	<i>October 1, 2005</i>	New section
Sec. 11	<i>October 1, 2005</i>	New section
Sec. 12	<i>October 1, 2005</i>	New section
Sec. 13	<i>October 1, 2005</i>	New section
Sec. 14	<i>October 1, 2005</i>	New section
Sec. 15	<i>October 1, 2005</i>	New section
Sec. 16	<i>October 1, 2005</i>	New section

Statement of Purpose:

To adopt the Model Drug Dealer Liability Act in order to provide a civil remedy for damages to persons in a community injured as a result of illegal drug use and enable such persons to recover from those persons in the community who have joined the illegal drug market.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]